

**MOTION BY CHAIR HILDA L. SOLIS  
AND SUPERVISOR SHEILA KUEHL**

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**Creating a County Licensing Requirement for Immigration Consultants**

California is home to one-fourth of the nation’s undocumented immigrant population. Undocumented immigrants are not directly counted in surveys, but best estimates quantify California’s undocumented immigration population at approximately 2.67 million, or 6% of the total state population. More undocumented immigrants reside in Los Angeles County than in any other area in the State. Estimates indicate that there are nearly 815,000 undocumented residents in the County of Los Angeles.<sup>1</sup> The vast majority of undocumented immigrants in Los Angeles County are from Latin American Countries.

Immigrant communities throughout Los Angeles County are routinely victimized by immigration scams that involve the unauthorized practice of immigration law (“UPIL”). UPIL occurs when legal advice and/or representation regarding immigration matters is provided by an individual who is not an attorney or accredited representative. Examples of the legal advice may include: how to answer questions on immigration forms and immigration options for relief available to applicants and/or petitioners.

Here in Los Angeles County, these unscrupulous individuals are often referred to as “*notarios*,” a label which itself assists in this deception. “*Notario*” is short for “*notario publico*,” which translates literally to “notary public.” In much of Latin America, notary publics are roughly equivalent to a lawyer and are authorized to represent others before the government. In contrast, notaries public in the United States are only authorized to witness signatures and authenticate documents. Many of those who prey on undocumented Los Angelenos obtain an American notary public license and use this to

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<sup>1</sup> Hill, L., & Hayes, J. (2015, June 01). Just the Facts: Undocumented Immigrants. Retrieved August 03, 2016, from <http://www.ppic.org/>

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RIDLEY-THOMAS \_\_\_\_\_

KUEHL \_\_\_\_\_

KNABE \_\_\_\_\_

ANTONOVICH \_\_\_\_\_

SOLIS \_\_\_\_\_

fraudulently misrepresent their qualifications to immigrants who ascribe a very different meaning to the term.

The California Immigration Consultants Act (“ICA”), codified at California Business & Professions Code section 22440 - 22449, regulates non-attorneys engaged in immigration form preparation. The ICA authorizes non-attorneys to complete immigration forms under certain conditions, while imposing a number of affirmative requirements on “immigration consultant” form preparers. The ICA defines Immigration Consultants as “persons who provide non-legal assistance or advice in an immigration matter.” The ICA unequivocally prohibits immigration consultants from providing legal advice or services that attorneys perform.

In practice, many immigration consultants disregard the ICA restrictions and dispense legal advice in a highly complex area of law in virtually all of their interactions with their “clients.” It is common for immigration consultants to threaten and intimidate “clients” who seek reimbursement of the monies paid for their services. Enforcement of the state licensing scheme relies largely on individual complainants, a strategy hamstrung by the fact that many immigrants fear that reporting this fraud will expose their undocumented status. Worse yet, many victims do not discover the fraud until years after their initial contact with the non-attorney.

Even when complaints are filed, investigations and prosecutions commonly involve large numbers of victims and the extensive use of departmental resources. The enactment of a county licensing ordinance regulating immigration consultants will allow authorities to more effectively and efficiently monitor and regulate immigration consultant business practices and facilitate case investigations. The ordinance will also deter unlawful immigration consultant conduct by creating personal consultant accountability.

The pervasive problem of *notario* fraud has a profound negative impact on the legitimate legal services market in Los Angeles County. These dishonest legal service providers far outnumber legal aid attorneys and Board of Immigration Appeals Accredited Representatives. Legal aid attorneys and Accredited Representatives spend considerable time advising *notario* fraud victims and correcting the harm they have caused to individuals seeking legal status.

Fraudulent immigration consultants and *notarios* also impact the private immigration attorney market. Many immigration consultants and *notarios* charge substantial fees for supposedly non-legal form preparation services. U.S. Citizenship and Immigration Services (“USCIS”) application fees are also substantial. When an immigration service is performed improperly, an immigrant family that has lost a large sum to an immigration consultant or *notario* rarely has any remaining resources to hire legal counsel to remedy the case.

Immigration consultants and *notarios* compromise the integrity of the legal immigration system, often submitting fraudulent or improperly prepared applications to

USCIS or the immigration courts. Immigrants who are not proficient in English are often unaware of the inaccurate information on application forms.

Los Angeles County is home to approximately 800,000 naturalization-eligible residents, and over 50,000 residents who are eligible for Deferred Action for Childhood Arrivals ("DACA"), but who have not yet applied. The majority of those eligible for these benefits are low-income; thus, losing money to a fraudulent or incompetent legal service provider will likely prevent these low-income men and women from ever legalizing their status in the future, therefore jeopardizing their earning potential and overall well-being.

Because the problem of *notario* fraud is especially acute and pervasive throughout Los Angeles County, it is in the interest of the County to direct consumers toward legitimate legal service providers, as well as to ensure that all immigration consultants operating within the unincorporated area of the County are in compliance with state and local laws. It is also in the interest of the County to create laws that are tailored to local conditions, potentially allow for citation of immigration consultants who are out of compliance with the law, and fund all administration and enforcement efforts.

**I, THEREFORE MOVE** that the Board of Supervisors

1. Direct the County Counsel, in consultation with the Director of Consumer and Business Affairs; the Treasurer and Tax Collector, ex officio license issuer; and other relevant County departments to report back in 90 days with a proposed ordinance that would license immigration consultants, and other recommended ordinances needed to help combat immigration services fraud. To the greatest extent authorized by law, the ordinance(s) should provide for, but need not be limited to, the following:
  - a. Countywide business licensing pursuant to Los Angeles County Code Title 7, Section 2 for immigration consultants operating in the unincorporated areas of Los Angeles County;
  - b. A maximum fee that immigration consultants may charge. This fee cap should reflect the non-legal nature of immigration form preparation services;
  - c. Administrative penalties, fines, and notices, including but not limited to:
    - i. Penalties for operating without a valid business license;
    - ii. Authority for the County to take action against a business license in the event of a violation;
    - iii. Posting requirements for the California Immigration Consultants Act and posting requirements for any notices of non-compliance;

- d. Subpoena powers;
  - e. Authority to recover all costs associated with licensing immigration consultants, including costs related to enforcement of the licensing requirement, investigations, and related prosecutions; and
  - f. Partnerships with enforcement authorities and the ability to make referrals to other agencies, including but not limited to, the California Attorney General, Los Angeles City Attorney and the Los Angeles District Attorney;
2. Direct the County Counsel, in consultation with the District Attorney, to research and consider the inclusion of a statute of limitations "date of discovery" provision, consistent with Penal Code section 802 (e), in the penalty provisions of the proposed ordinance.
  3. Require that all immigration consultants operating in Los Angeles County comply with all provisions of the California Immigration Consultants Act and all provisions of California Business and Professions Code section 6126, as well as additional, locally-tailored provisions, including but not limited to signage and contract language requirements that clarify for consumers the fee cap established by the ordinance. These provisions shall be set forth in County Code, in order to maintain a valid business license in the unincorporated areas of Los Angeles County subject to the jurisdiction of County Code;
  4. Direct the Treasurer and Tax Collector, in consultation with the Department of Consumer and Business Affairs, County Counsel and the District Attorney, to determine whether the provisions for non-compliance in Title 7 and the authority for the investigation of violations are sufficient or need to be enhanced, and report back in 90 days;
  5. Request that the District Attorney, in consultation with the Treasurer and Tax Collector, Department of Consumer and Business Affairs, the Executive Officer – Board of Supervisors on behalf of the Business License Commission, County Counsel and other related departments, to report back in 90 days on strategy for enforcing violations which may include civil fines and penalties, as well as criminal prosecution;
  6. Ensure license fees and fines are developed, to the extent permissible, to fully recover the costs of the efforts of all County departments tasked with the administration and enforcement of the ordinance(s);
  7. Direct the Director of DCBA to report back in writing in 90 days on recommendations for specific strategies that focus on marketing and outreach efforts that ensure to the greatest extent possible, culturally competent and linguistically appropriate communication for the full diversity of the County and potentially affected populations regarding the new potential licensing framework

for immigration consultants, and the rights and responsibilities of immigration consultants under the California Immigration Consultants Act, as well as the reasonable budget cost of such public education and outreach efforts. In addition, consider mechanisms through which the County can provide consumers with information regarding businesses that are compliant, and non-compliant, with the ordinance(s);

8. Direct the Treasurer and Tax Collector and Department of Consumer and Business Affairs, in consultation with County Counsel, to report back in 90 days on any recommendations regarding potential legislation to combat notario fraud and legally challenge immigration consultants and notarios for fraudulent, deceptive or unfair practices.

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